

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
October 27, 2009**

Place: Room 206
Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Conze, Spain, Hutchison, Bigelow, Riccardo

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat
FILMED: Channel 79

PUBLIC HEARING

Chairman Conze read the following agenda item:

Continuation of Public Hearing regarding Proposed Amendment to Zoning Regulations #5-2009, Affordable Housing Application under CGS 8-30g, Special Permit Application #256, Garden Homes, 397 Post Road apartments, 397 Boston Post Road. Proposing to modify the zoning regulations to allow conversion of certain buildings within the DB-2 zone as a Special Permit use; and application for a Special Permit to convert an existing office building at 397 Boston Post Road to 35 multi-family rental units; and perform related site development activities. The subject property is located on the northeast side of Boston Post Road approximately 475 feet southwest of its intersection with Birch Road, and is shown on Assessor's Map #14 as Lot #47, in the DB-2 Zone. *NOTE: THIS HEARING WAS ORIGINALLY OPENED ON SEPTEMBER 22, AND WAS CONTINUED TO OCTOBER 13. DEADLINE TO CLOSE HEARING IS OCTOBER 27, UNLESS EXTENSION IS GRANTED BY APPLICANT.*

Attorney Timothy Hollister of Shipman and Goodwin represented the applicant and submitted hard copies of a letter and document dated October 26, 2009. This material had been electronically transmitted to the Planning and Zoning Department the day before. Mr. Hollister made the replacement of Section 8 of that document to correct a misstatement. He referred to the approved site plan from 1977 with the drainage information. Mr. Hollister said that the application is not to significantly change the site plan, so they should not be held to the same standard as new construction. Mr. Hollister said that Section 384 of the Zoning Regulations concerns non-conforming situations and, in this case, the dimensions in the parking lot and the size of the building are non-conforming, but the use is a conforming use. Proposed amendments to Sections 624, 625 and 626 of the Zoning Regulations would authorize the maintenance of the non-conforming dimensions for the conversion of the existing building into affordable housing. He said that no storm water flows from the site into the Grant parking lot because the storm water flows in accordance with the 1977 plan that was approved by the Town. He said that the storm drainage requirements of Section 880 of the current regulations do not apply because this is not a teardown and there are no site changes. He formally requested that if the Commission believes that Section 880 might apply, he requested a waiver under Section 888 of the Regulations. He did say, however, that if the Commission desires, they can install infiltrators so that runoff water can be allowed to percolate into the back yard area underneath the proposed patios.

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Mr. Hollister noted that the Planning and Zoning Department staff had previously submitted a memorandum about the Town's efforts to create and approve affordable housing within the community. He submitted a copy of the Southwestern Regional Planning Agency Report (SWRPA) and memorandum regarding affordable housing. Mr. Hollister said that there would be no change to the driveway and no need to trench across the Boston Post Road for installation of the power line because they will be replacing overhead wire from one side of the Boston Post Road to the other. Based on the fact that there are no site development type changes, they will not need a Permit from the Connecticut Department of Transportation.

Attorney Hollister said that he has had a number of discussions with the representative of the neighbor, and the applicant would be willing to abide by certain conditions of approval. Those conditions could include: installation of a five foot tall fence along the west property line to minimize the likelihood of pedestrians accessing the subject site from the Grant parking lot; in the northeast corner of the site, the applicant would install a new opaque fence to provide additional privacy to the residential neighbor and to preserve existing vegetation in the area as much as possible. The cost to install and maintain the fence would be borne by Garden Homes; Changes to the lighting will assure that there will be no glare or light source facing the residential neighbor; the extent of the lawn would be restricted to the current lawn area, and the existing planting and landscaping within the buffer area would be preserved; internal signage will be placed in the parking lot to restrict any off-site parking and, if necessary, they could implement a resident parking sticker program; the proposed dumpster enclosure would be improved and upgraded; the use of the residential units will be for rental purposes only, and they will not be condominiums or sold; once this plan is approved, they will update the 1977 site plan to show the few changes such as patios and lights that will be implemented as part of this project. Attorney Hollister said he'd reviewed these items that had been proposed by Attorney Gleason, and they are all acceptable.

Mr. Hutchison asked if it was possible to have a storm drainage maintenance plan as part of the project, and to require periodic inspections, say every three months. This would allow for inspection of the catch basins and maintenance if needed. Mr. Hollister replied that the maintenance plan is something that could be incorporated into an approval. Mr. Bigelow said that the Fire Code requirements might change in the future, and might require additional lighting or external egress stairs. He also noted that it might be better to have the parking sticker program in place from the very beginning rather than trying to implement it after people have already moved in.

Mr. Hollister said that permits are preferred over stickers for parking.

Attorney Wilder Gleason represented the Grant family that owns several properties in the area. He said that the application is deficient because it is incomplete. He said that the applicant is now saying that they will do an updated survey map after they build the project. He said that the Commission needs to require that the updated map should be submitted now so that everyone knows what is actually there. He said that the 1977 drawing is a plan of what was proposed. It was drawn before the site was actually developed. There is no way to know if the actual site improvements complied with the drawing that was prepared before the work was done. He said that the Commission needs to reject the current application so that the applicant can prepare a real plan of what is there and of any proposed work. He said that Section 903 of the Regulations requires that the change of use requires compliance with the current Regulations. He said that the letter from

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the engineer representing the applicant, says that what was proposed was built. However, it does not say that it was built as it was approved. Attorney Gleason said that back in 1977, there was no formal requirement for a 25 foot wide buffer area within the business zone to protect the single family residential zone immediately adjacent to the commercial zone. He mentioned that it is unknown how wide the landscaped area is between the existing and proposed lawn and the residential boundary line. He said that there is no graphic representation of where the lawn and buffer is located. He argued that the Commission cannot just assume that everything is okay, and then after the applicant finishes building what they want, then submit an as-built. He said that an as-built survey frequently is a condition of approval, but only when the Commission knows exactly what is there to begin with. He said that requiring an as-built survey without knowing what is there would mean that the as-built survey could take longer than 60 days, but in that time period the appeal period would expire. He said that to protect his clients, he would need to appeal any condition of approval that tries to make up for the fact that the applicant has not provided the required current conditions information.

Mr. Spain asked if later there were a problem discovered about how something was built, how should the Commission deal with that situation. Mr. Gleason replied that such an occurrence is exactly why the Regulations require that the site plan show the existing conditions--not just what was proposed back in 1977. Attorney Gleason noted that the front landscaping is not as it is shown on the old proposed drawing. Who knows what other differences there might be between what is proposed and what is actually on the site. He said that Section 1003 of the Zoning Regulations requires that the applicant secure and submit to the Commission other permits that are necessary. Attorney Gleason submitted an email from Paul Hanley of the Connecticut Light & Power Company dated 10/26/09 with a letter from NLG Engineering indicating that the new electrical line is needed. Mr. Hanley's letter clarifies that a new, underground conduit is required by CL&P to have uninterrupted service. It also notes that they will need to install a second transformer while the first transformer is still in place. No sizes or details of the transformer have been determined yet, because no load information has been provided to CL&P. Mr. Gleason said that this is the type of detail that the applicant needs to provide so that everyone then knows what is being proposed. He also noted that the Connecticut Department of Transportation officials may want to reduce the number of curb cuts along the Boston Post Road. He wondered what the applicant would do if the local permit specified two existing curb cuts and the Department of Transportation said that only one curb cut of driveway is allowed. He claims that the application is so incomplete that it must be denied.

Mr. Spain wondered whether the conditions of approval that were discussed before would be deemed reasonable, and whether a court would find them appropriate. Mr. Conze said that under Section 8-30g of the Connecticut General Statutes, affordable housing applicants are given much leeway. He noted that the proposal involves changing the use of the existing building, and there would be no change to the footprint of the building. He said that this makes it seem simple, but who knows what was actually built there. He noted that it is troublesome that the applicant has not provided the standard, required information.

Attorney Hollister responded that the applicant has been working with the staff for months, and no request was then made for more information, nor has there been any notice that the application is incomplete. He said that this is an approved site plan on file with the Town, and clearly the drainage system and driveways work as they originally were designed. He said that if the

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Commission wants to require that the applicant verify the dimensions are as illustrated on the 1977 site plan, that can be taken care of. Mr. Conze noted that there have been many projects that have been approved that are not necessarily built the way they were originally approved. He said that having a proper document of what is really there is important. Mr. Hollister said that if the Commission wants an as-built survey, they will provide it. Attorney Gleason said that Section 1024 of the Regulations details what a site plan needs to include.

After further discussion, it was noted that it would be appropriate to continue the Public Hearing. In order to continue the Public Hearing, an extension from the applicant is necessary. A possible continuation date of November 24th was discussed. Attorney Hollister, representing the applicant, granted an extension of the time period so that the hearing could be continued on November 24th.

The following motion was made: That the Commission recess the Public Hearing and continue it on November 24, 2009 at 8 p.m. in Town Hall. The motion was made by Mr. Bigelow, seconded by Mr. Spain and unanimously approved.

At about 9:00 p.m., Chairman Conze read the next agenda item.

Business Site Plan #170-A/Special Permit, Planet Pizza, 878-882 Boston Post Road. Proposing to establish a pizza restaurant in the first floor space formerly occupied by Curves. The subject property is located on the east side of Boston Post Road at the northeast corner formed by the intersection of Mechanic Street and Boston Post Road and is shown on Assessor's Map #71 as Lot #8, in the CBD Zone.

Richard H. Girouard, Sr., of New England Consulting represented the applicant and explained that a Special Permit is being sought to establish a pizza restaurant in the space formerly occupied by Curves, on a property owned by William Gray Schaefer on the Boston Post Road at the corner of Mechanic Street. Mr. Ginsberg said that the Zoning Board of Appeals has granted a parking variance subject to a number of conditions and stipulations (Calendar #37-2009). A Captiveaire ventilation system is designed to minimize odors being exhausted into the neighborhood. Indoor seating is proposed at this time. In the future, the applicant might want to return to the Commission to request outdoor seating.

Mr. Girouard said that the applicant operates several other pizza restaurants, and most are in similar downtown areas with other tenants above. The venting system proposed adequately addresses concerns regarding the discharge of odors.

Mr. Ginsberg read comments received for the file on this matter. The first, from the Darien Police Department indicates that no parking is permitted on this side of the Boston Post Road, and that delivery vehicles should not park on the Boston Post Road. The Fire Marshal indicated that emergency lighting would be required, and the Public Works Department said that a grease trap would be required.

Mr. Hutchison noted that pedestrian traffic in this area is very heavy. Parking would need to be on the Mechanic Street side of the Boston Post Road. Mr. Girouard said that the garden located at the corner is maintained by the owner, William Gray Schaefer. Mr. Schaefer has been maintaining the garden since 1978.

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There were no comments from the public regarding the application, and no further comments or questions from Commission members.

The following motion was made: That the Commission close the Public Hearing regarding this matter. The motion was made by Mr. Bigelow, seconded by Mrs. Riccardo and unanimously approved. Mr. Conze then read the next agenda item:

Special Permit Application #258, Cava Wine Bar & Restaurant, LLC, d/b/a Cuvee, 1077 Boston Post Road. Proposing to establish a new restaurant in a portion of the first floor space formerly occupied by Ann Taylor Loft. The subject properties are on the northwest side of Boston Post Road, approximately 550 feet northeast of its intersection with Leroy Avenue, and are shown on Assessor's Map #73 Lots #7 and #42 with shared parking on Lots #40 and #41, in the CBD & PR (portion of shared parking lot) Zones.

Attorney Bruce Hill explained that the existing space from the ground floor has been occupied by Ann Taylor Loft. That business is leaving, and that existing first floor retail space will now be occupied by Joseph A. Banks Clothier and the proposed use which is a restaurant/wine bar. Most of the work to accommodate this restaurant will be interior renovation. However, one new venting chimney is needed. He said that the existing on-site parking and shared parking facility appears to be sufficient. He submitted a one-page chart regarding on-site and nearby parking. He said that the application is to open the restaurant at 5 p.m. and to serve dinner and drinks. Hopefully, they will be successful and will apply in the future for opening during lunchtime as well. Mr. Spain said that he recalls that peak parking time in this joint parking lot is 1 p.m. on Saturdays. He hopes that the restaurant use will not conflict with the other parking needs of the tenants.

In response to questions, Rick Holmes explained that the wine bar is really a fine dining experience. They will have a full menu prepared in a full-sized kitchen. Elizabeth Sigvent said that they have a large selection of wines by the glass, and the restaurant is very customer oriented.

The proposed outdoor dining area was discussed. Mr. Hill noted that plans have been revised to eliminate one of the rows of outside seating (eliminating five tables). A detailed revised plan will be submitted. Mr. Holmes explained that they will use the Boston Post Road as the main entrance. They will need to winterize the vestibule. He said that the side door is primarily for emergency egress and for employees. He said that food storage will all be on the same level, and that dry storage will be in adjacent space.

Mr. Bigelow expressed concern about the adequacy of the on-site trash dumpsters to accommodate a food business. Mr. Hill said that there are three dumpsters on the site, each of which accommodates four cubic yards. They will increase the frequency of pickup to accommodate the food service business. Mr. Spain said that it would be very important not to allow any deliveries from the Boston Post Road. Delivery vehicles will need to use the back parking lot. Mr. Holmes said that the door into the kitchen is on the west side of the building and close to the back parking lot. Mr. Spain said that the customers will use the front door, and the employees and deliveries will use the side door. Customers can use the side door as an emergency egress. Mr. Holmes said that the outside seating plan will be revised and submitted. Commission members noted that it will be necessary to continue the Public Hearing in order

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to receive additional information. Mrs. Grimes asked about the storage of the outdoor tables and chairs in the off-season months. Those will be stored off site.

Linda Stevens explained that she has been a resident of Town for thirteen years, and said that the revitalization of the downtown should continue. She said that the proposed restaurant use is a nice, high-quality restaurant and should be permitted by the Commission.

The following motion was made: That the Commission continue the Public Hearing regarding this matter at 8 p.m. in Room 206 of the Town Hall on November 17, 2009. The motion was made by Mr. Bigelow, seconded by Mrs. Riccardo and unanimously approved.

At about 9:30 p.m., Mr. Conze read the following agenda item:

Special Permit Application #257, Land Filling & Regrading Application #232, John & Lisa McDermott, 19 Horseshoe Road. Proposing to remove existing basketball court, construct a new multi-purpose seasonal sports court with associated accessory structure and perform related site development activities. The subject property is located on the south side of Horseshoe Road approximately 1,200 feet northwest of its intersection with Inwood Road and is shown on Assessor's Map #3 as Lot #21, in the R-2 Zone.

Architect Chris Pagliaro of Roger Bartels Architects represented the applicant. He noted that the drawings and plans show various additions proposed to the house, all of which comply with the Regulations and do not need Special Permit approval from the Commission. The one aspect of the project that does require Special Permit approval is the multi-purpose sports court that is proposed on the side of the house. He said that the sports court is not located within 50 feet of any wetlands, and is located more than 75 feet from the center line of the street. The sports court will be used throughout the year for games such as basketball and tennis. During the winter, the surface would be covered with a waterproof material and flooded so that it can become an ice skating area. He said that no lights will be installed on the sports court or play skating area.

Steve McAllister, Project Engineer from McChord Engineering, said that there is a very slight ¼% grade from east down to the west. A three foot high retaining wall will be built on the west side of the property to make this sports court area flat. A drainage swale will collect water from the flat area and convey it to a level spreader. He said that soil tests were conducted in the vicinity of the level spreader, and the soil conditions will allow water in that area to percolate into the ground.

Mr. Ginsberg noted that the Health Department had approved the location of the work because it will not adversely affect the on-site septic system. He also noted that there is heavy landscape screening between the street and the proposed sports court. The location of the sports court complies with the Special Permit requirements and setback regulations. Photographs of the existing trees and landscaping were submitted.

It was explained that the surface of the sports court will be like asphalt, and the size will be roughly 58+/-' x 93+/-'. A special chiller unit will be installed near the house to make sure that the water will be kept frozen during the winter. Mr. Pagliaro said that the chiller unit sounds comparable to an air conditioning unit. Commission members asked how the ice would be kept

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clean. Mr. Pagliaro responded that a machine somewhat like a zamboni will be used to clear the ice. That machine is as small as a lawn tractor.

There were no comments from the public and no further questions or comments from Commission members.

The following motion was made: That the Commission close the Public Hearing regarding this application. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

Mr. Conze then read the following agenda item:

Coastal Site Plan Review #244, Flood Damage Prevention Application #276, Michelle Canning, 112 Five Mile River Road. Proposing to remove existing pier and ramp and construct a new pier, ramp and stairs and perform related site development activities within regulated areas. The subject property is located on the east side of Five Mile River Road directly across from its intersection with Davis Lane, and is shown on Assessor's Map #67 as Lot #1 in the R-1/2 Zone.

David R. Provencher of Coastline Consulting, LLC represented the applicant and explained that the purpose is to construct a replacement residential dock. The existing old dock facility will be removed. The new dock design has been approved by the Connecticut Department of Environmental Protection (DEP) and the US Army Corps of Engineers. There will be a small amount of fixed pier-like structure that would lead to a ramp, and the ramp will lead down to a float in the water. He said that the new pier structure is elevated to be above the high tide line. It will utilize an open grate decking to minimize the possibility that it will be damaged during the storm tide conditions. There will be side rails on the pier in order to comply with the Building Code and safety requirements. In response to a question, he said that the typical life span of a structure like this will depend on the maintenance and on storm events. He said that if it is properly maintained, the owner should expect that it would last approximately two decades.

Dave Campbell explained that he lives next door, and he said that the area is extremely susceptible to flooding. He asked if there would be any filling involved in the project. Mr. Provencher responded that there will be no filling and no change of grade.

There being no further comments or questions, the following motion was made: That the Commission close this Public Hearing regarding this matter. The motion was made by Mr. Bigelow, seconded by Mrs. Riccardo and unanimously approved.

GENERAL MEETING

Mr. Conze opened the General Meeting and read the following agenda item:

Flood Damage Prevention Application #194-A, Sara Ann Bassler, 13 Seagate Road.
Proposal to replace existing deck with a new deck and stairs.

Mr. Ginsberg explained that a previous approval had been granted several years ago to replace and expand the existing deck structure. That approval has expired. The applicant, Mrs. Bassler, has

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resubmitted an application to replace the existing unsafe deck with a new deck of the same size. The only difference would be that the deck will be slightly lower than the existing structure, and the new deck will comply with the safety requirements. The applicant has submitted signatures from all the neighboring property owners indicating that they have reviewed the plans, have no objections to the plans, and see no need for a Public Hearing.

Mrs. Bassler explained that the purpose is to replace the existing, unsafe deck with a new deck that will be safe.

The following motion was made: That the Commission waive the requirement for a Public Hearing because the applicant has submitted signatures from all the neighboring property owners, and that the Commission approve the request for a replacement deck in accordance with the submitted plans. The motion was made by Mr. Hutchison, seconded by Mr. Bigelow and unanimously approved.

Approval of Minutes

October 16, 2009 Special Meeting

The draft minutes were discussed. The following motion was made: That the Commission adopt the minutes as submitted. The motion was made by Mr. Bigelow, seconded by Mr. Spain. All voted in favor except for Mr. Conze who had not attended the meeting.

Mr. Conze noted that Mr. Bigelow had served on the Commission for more than 10 years, and is not running for re-election. He and the other Commission members thanked Mr. Bigelow for his many years of service.

There being no further business, the meeting was adjourned at 9:50 p.m.

Respectfully submitted,

David Keating
Assistant Planning & Zoning Director

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